

REMARKS

Claims 1-13 are pending in this application. By this Amendment, claim 1 is amended and claims 11-13 are added. No new matter is added.

Applicants appreciate the courtesies shown to Applicants' representative by Examiner Ralis in the September 9 personal interview. Applicants separate record of the substance of the interview is incorporated into the following remarks.

Claims 1-3, 5-7 and 10 are rejected under 35 U.S.C. §102(a) or §102(e) over U.S. Patent Pub. No. 2002/0131918 to Nelson et al. ("Nelson"). Claim 5 is rejected under 35 U.S.C. §103(a) over Nelson. This rejection is respectfully traversed.

Claim 1, as amended, now recites the "a distance "a"...and a thickness "c" of the ceramic body satisfying a relationship " $(c/2) \leq a \leq 2c$ ". As discussed during the September 9 interview, Nelson does not disclose this feature.

The Office Action asserts that Nelson discloses a thickness "y" in paragraphs [0040]-[0042] and in Figs. 4-6. The Office Action notes that this thickness ranges from .38mm to 1mm. The Office Action further asserts that distance 35, in Figs. 5 and 6 of Nelson, is equivalent to the recited distance "a." However, Nelson does not explicitly disclose how large the distance 35 is. Nelson merely discloses that the "distance 35...is large relative to the width 13 of the tines 12" (emphasis added). See [0041] of Nelson. Nelson fails to disclose a specific range of distance 35.

Nelson discloses that the tines 12 have a width of .5 - 2.0 mm. See [0035] of Nelson. In section (15) the Office Action speculates that if the tines had a width of .5mm, then a "distance 35" of .7mm would be large relative to the .5mm tine. As such, the Office Action asserts that the distance 35 can be extrapolated to include being in the .5 - 2.0 mm range (or presumably the .7 - 2.2 mm range). The Office Action uses this extrapolation to assert that Nelson discloses the " $(c/2) \leq a \leq 5c$ " relationship recited in claim 1.

However, as discussed during the September 9 interview, the Office Action's assertion that .7 is "large relative" to the tines is impermissible under the laws governing anticipation. To anticipate a range, the claimed subject matter must be disclosed in the reference with "sufficient specificity" to constitute an anticipation. See MPEP § 2131.03 citing *Atofina v. Great Lakes Chem Corp.*, 441 F.3d 991, 999 (Fed. Cir. 2006). The MPEP also states that a claim is not anticipated if the reference only discloses a range that is "very close to, but does not overlap" the recited range. Finally, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP §2112 IV. Citing *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993).

Nelson fails to disclose with sufficient specificity what the actual thickness of element 35 is. The Office Action's assertion that .7mm is large relative to a .5mm tine is an assertion predicated on hindsight, knowing that value is needed to fulfill the recited formula. Furthermore, as discussed above, Nelson discloses that element 35 is large relative to the tines, which range from .5 - 2 mm. As such, it is unreasonable to interpret the term "large relative" to include .7mm which lies within the anticipated range of the tines themselves. At the very least, a reasonable interpretation of this term would lie outside the disclosed range of the tines themselves.

Furthermore, claim 1, as amended, now requires that $a \leq 2c$. Thus, "a" must now be an even smaller value. Therefore, the likelihood in which Nelson's distance 35 (which is "large relative" to a .5-2mm tine) would be under 2mm (as would be required for when $y = 1$, the largest disclosed value for "y" in Nelson) is correspondingly that much more remote.

Thus, for at least the above reasons, Nelson fails to disclose each and every limitation of claim 1. Therefore, withdrawal of the rejection of claim 1, and claims 2, 3, 5-7 and 10 depending therefrom, is respectfully requested.

Claim 4 is rejected under 35 U.S.C. §103(a) over Nelson in view of U.S. Patent Application Publication No. 2002/0027133 to Kellogg et al. ("Kellogg"). Claim 8 is rejected under 35 U.S.C. §103(a) over Nelson in view of U.S. Patent No. 6,423,190 to Hemmingway et al. ("Hemmingway"). Claim 9 is rejected under 35 U.S.C. §103(a) over Nelson in view of Hemmingway and U.S. Patent Application Publication No. 2005/0229564 to Okubo et al. ("Okubo"). These rejections are respectfully traversed.

Claims 4, 8 and 9 depend from claim 1. As discussed above, Nelson fails to disclose or suggest the subject matter of claim 1. Furthermore, Kellogg, Hemmingway and Okudo fail to supply the missing subject matter of Nelson. As such, claims 4, 8 and 9 are in condition for allowance based on their dependence from claim 1, as well as for the separately patentable subject matter they recite.

Finally, with regard to new claims 11-13 the applied references fail to disclose the recited ranges of "c." Nelson discloses that "y" lies within a range of .38 mm to 1.0 mm, preferably 0.5 mm. See paragraph [0040] of Nelson. Thus, claims 11 and 12 are clearly outside of the recited range. Furthermore, claim 13 recites that c is less than .25mm. At that thickness, "a" must be .5mm or smaller, in view of the recited formula. As noted above, Nelson discloses that distance 35 must be larger than the tines, which in turn are disclosed to be at least .5mm thick. Thus, Nelson fails to disclose either the recited "c" or "a" values of claim 13. Thus, claim 11-13 are in condition for allowance.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-13 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachments:

Request for Continued Examination
Petition for Extension of Time

Date: September 29, 2008

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